

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CHIRIMAR SYSTEMS, INC.,

Plaintiff,

-vs-

Case No. 06-13936
Hon: AVERN COHN

FOUNDRY NETWORKS, INC.,

Defendant.

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ORDER OF SUPPLEMENTAL REFERENCE TO SPECIAL MASTER

I.

This is a patent case. Defendant filed two dispositive motions (Doc. Nos. 84, 89) which were referred to the Special Master for report and recommendation. See Doc. No. 83. On December 16, 2009, the Special Master filed two (2) reports and recommendations as follows:

Report And Recommendation Of Special Master Concerning Defendants' Motion For Application Of Collateral Estoppel To "Green Book" And "AMD Application Note" Prior Art References (Doc. No. 111)

and

Report And Recommendation Of Special Master Concerning Defendants' Motion For Summary Judgment Of Noninfringement Of Claims 16 And 17 Of The '260 Patent Due To Collateral Estoppel (Doc. No. 112).

Plaintiff has filed Objections as follows:

Plaintiff Chrimar's Objection To The December 16, 2009 Report And Recommendation Of The Special Master

Concerning Defendants' Motion For Application Of Collateral Estoppel To "Green Book" And "AMD Application Note" Prior Art References (Doc. No. 114).

Defendant has filed Objections as follows:

Defendants' Joint Objection To The Report And Recommendation Of Special Master Concerning Their Motions For Summary Judgment Of Noninfringement Due To Collateral Estoppel (Doc. No. 115).

II.

The Special Master was appointed to deal with defendant's motions because of the complexity of the subject matter. It will simplify consideration of the objections if, in the first instance, the Special Master is given the opportunity to address them as if on a motion for reconsideration.

Fed. R. Civ. P. 53, entitled Masters, as promulgated in 1937 and up to the 2003 amendments, read: "(5) Draft Report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions." As explained in The Federal Rules of Civil Procedure, 25 Va.L.Rev. 261, 293 n.128 (1939), "This is known as settling the master's report." Charles Alan Wright & Arthur R. Miller, 9C Federal Practice and Procedure §2611, at 623-24 (3d ed. 2008), suggests "these practices should continue under the present rule." See Norfolk Shipbuilding & Drydock Corp. v. Seabulk Transmarine P'ship, 274 F3d 249, 252 (5th Cir 2001).

Accordingly, the objections are referred to the Special Master to report and recommend in writing the appropriate disposition of the motions for summary judgment in light of the reports and recommendations and the objections.

III.

This reference incorporates the provisions of the Appointment and Order of Reference to Special Master (Doc. No. 24) as to the duties and procedures to be followed by the Special Master.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: April 5, 2010

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, April 5, 2010, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160